

**Town of Milton  
Planning & Zoning Commission  
January 15, 2008  
7:00 p.m.**

**Members Present:**

Linda Rogers  
Louise Frey

Dean Sherman  
Virginia Weeks

Bill Brierly  
Michael Filicko

**Absent:**

Ted Kanakos

Gene Steele

Bernice Edwards

**Others Present:**

Robin Davis  
John Brady

Bob Kerr

Debbie Pfeil

**Linda Rogers called Public Hearing to order at 7:15 PM**

- a. The applicants, Lesa and Paul Howard, are requesting preliminary site plan approval for a physician's office to be located at 506 Union Street. The property is currently zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-16.00.

Linda Rogers: Is there anyone present on behalf of this application? Please talk into the mic, state your name for the record, and make your presentation.

Charles Adams: I'm Charles Adams with Adams, Kemp & Associates in Georgetown, DE, and I'm representing Paul & Lesa Howard on the preliminary site plan approval on this property. I brought along some drawings that have been revised based on the January 8<sup>th</sup>, 2008 memorandums from Robert Kerr and Debbie Pfeil, and I would like to address Mr. Kerr's first. I have some also side elevation views done by Griffin Home Builders for the revised side elevation views for the porches and the shutters, the roof line and associated things about the building. One of the first things was the parking; there was a question about one of the first parking lots which is a handicap space which is about 20' from the front property line. As Mr. Kerr stated, in an R-1 zone, typical setback is 30' in a vacant lot, a newer subdivision. Along this town street in Milton as well as most other towns, they allow for a setback by the established building line. I've noted on my plan the established building line for the 3 houses, the 2 adjacent houses and the existing house that will be added onto to create this building, is about 9.7', so we're exceeding that average building setback by about 10' for that first parking place. I just wanted to bring that up. We do have 19 spaces shown on the plan which 2 are handicap spaces. We did indicate 3-4' on the perimeter, except for the rear we show a grass strip that would appear between the bumper guard on the parking in the rear property line would be 3.4'. We have talked to DelDOT and we are preparing a DelDOT entrance plan showing the amount of traffic generated by the business, the adjacent driveways and all

the pertinent information they need to make a decision on the entrance configuration which would be at the same position that the existing entrance is although it would be taking one out and combining it into one entrance, just one entrance instead of a two entrance looped system that exists there now. We have done a calculation on the impervious area based on our existing site plan and the building, the paving and the gazebo come it at 69%; 70 is allowed. I'm not sure where the other figures that were generated, the 86%, came from. We came up with 69 on our recent calculation. We do show some landscaping but a further detailed landscaping plan would come with the construction plans and we show some outdoor lighting that would be turned-down lighting on the building, lighting on the gazebo and some unobtrusive lighting that would permit security for the building even though the closing hours are mostly before it gets dark, which would be 9am to 5pm Monday – Friday, and that's also stated on the drawing. Proposed sign is shown on the drawing although it's not detailed on the exact configuration of that sign. It would meet all Milton requirements and would go through the permitting process as a sign for the business. The building would be constructed with colonial colors that haven't been determined yet. They would come in at a sample, samples given to the building inspector for the construction permit. And if you have any other questions about the building, Mr. Howard's here and he may be able to answer any questions.

Linda Rogers: Does anyone have any questions of the applicant?

Virginia Weeks: Madame Chairman. I know that Mrs. Frey and myself have not seen these plans previously; we have not seen these elevation and we still can't see them. It was my understanding that anything we were supposed to vote on we were supposed to have at least a week in advance of this meeting. These are plans and plots that have been amended and changed. I have no idea what this building looks like; I can't see that from here. I have never seen them. I have not been given copies, nobody on this board has been given copies and we've not had a chance to look at them and study them. And I find that unacceptable. I don't why we're here doing this when we are being asked to vote on things we have never seen until 2 minutes ago. Is there a front door on this building?

John John Brady: Mrs. Weeks, that question is for the business part of the meeting for the members of the board to decide. This is part of the public hearing comment. The questions are directed to the applicant regarding what has been submitted. That is a proper question upon the discussion when we get to new business, but it is not a question at this point for the applicant. It's a question for procedures among the members of the board and the policies you've adopted.

Virginia Weeks: Very well. Thank you.

Linda Rogers: Does anyone have any questions of the applicant?

Bill Brierly: On the item of the number 6 of the remarks for screening of the parking area, is there...there's going to be a more detailed landscaping plan I assume and are you going to plan out screening the parking area from the adjacent houses to a good extent.

Charles Adams: Yes. I will let Mr. Howard...

Dr. Paul Howard: Well, at previous meetings, I have indicated that I'd be willing to do, comply with requests in that regard. Personally I think a fence would be less attractive than landscaping; that's my personal opinion. There might be a given area where a fence would be appropriate. There are some outbuildings and one adjacent property that are

quite close to today's setback lines that would be allowed and perhaps a fence in part of that would be appropriate but I think landscaping would be much more appropriate. And I have said that at previous meetings.

Bill Brierly: Would the landscaping be a continuous...are you looking at a continuous row or hedge to screen?

Dr. Paul Howard: Open to suggestions on that frankly. I don't have any preference per say. If you're facing the property from the road, there would actually be a fair amount of open space, their yard if you will, before the parsonage that's next door. And perhaps having a line of trees there would be less attractive than having an open yard. You know, I don't know that a fence on the perimeter, I mean a hedge on the perimeter of the whole property would be the most appropriate or attractive thing.

Bill Brierly: I was thinking maybe on that side to the left of the drive entrance, where it does come up close to that house; that's mainly what I was thinking about.

Dr. Paul Howard: Yes, something needs to be there, yes. And, would it be inappropriate at this point to comment on the comment on the plans or is that for another part of it.

Linda Rogers: No, you go ahead.

Dr. Paul Howard: Well, we submitted...

Linda Rogers: Oh, no, no, no...not in reference to her question.

Dr. Paul Howard: Yeah, that's inappropriate at this point, that's fine.

Debbie Pfeil: You can proceed with asking if there's any more public comments before you get into dialogue between the developer, engineer and the commission, and then close that out and open the business meeting for questions. Recommendation.

Linda Rogers: Does anyone else have any questions of the applicant? Does anyone here have any questions or comments?

Marion Jones: Procedural question. Can you tell me when these, the plans that you're looking at, would have been available and where to the public so that the public could have participated, because I must be amiss, what's the procedure please?

Debbie Pfeil: From what I understand, our comments were forwarded to the engineer as practice in the past. The plans will not be submitted the night of the meeting, therefore, as a consultant, I have not seen the plans that are sitting in the chairs tonight. They were not submitted to suit the Town in advance of the meeting.

Marion Jones: Oh no, no. It's for me the public. When could me, the public, have gone and viewed these plans so that I could have participated in tonight's meeting? Where and when?

Debbie Pfeil: Okay. The plans that are sitting on the chairs were not available for anybody, including ourselves.

Marion Jones: So it's hard for the public to...I'm sorry.

Debbie Pfeil: Wait, if I could finish. The plans that were submitted tonight are dated May 8, 2007 and they have been in the Town Hall from May 28, 2007 and they submitted this simultaneously with the conditional use. So it is the same plan that's been on file.

Marion Jones: And it's had revisions?

Debbie Pfeil: This plan does not have any revisions. It is the same one we have seen since May 8<sup>th</sup>, until today's night, and our comments are based on that.

Marion Jones: I'm as confused as you are. Then the answer is that these plans could not have been viewed by the public before this evening?

Debbie Pfeil: Not by anybody in the planning commission, the consultants or the public. Correct.

Marion Jones: Thank you.

Linda Rogers: Does anyone else have any comment?

Debbie Pfeil: If I could one more time, I'm sorry. And just for the record, on January 8<sup>th</sup>, the agenda was posted and it also says "At this time, when the agenda was prepared by the project coordinator, so as far as January 8<sup>th</sup>, everything on the January 15<sup>th</sup> agenda can be reviewed at the Town Hall and has been available.

Linda Rogers: Go ahead.

Jim Welu: 30231 East Mill Run, Milton. I'm not sure if, I don't think these plans that are up here are the ones that were in the package that was at Town Hall this morning when I went to take a look at the package. I was told, and I will not mention the name of one of the commissioners' who thought this was going to be the most beautiful building in Milton, and after looking at the plans today I would strongly disagree with that comment. I don't find these plans of this that's something that's going to really enhance the residential character of the community. Their nice, but they're certainly, I think, pedestrian; nothing unique capturing the character of the Town of Milton. I think they're awfully large when I look at the frontage from right to left across the front; it's a rather massive expanse as well as a massive expanse going from front to back, so I don't find it really very residential. Secondly, I had made a comment to the mayor, I doubt that if it got passed up any further that it seemed to me since the requirement is that this be returned to residential use and that the town not have some major complaint 10, 20, 30 years down the road that the house, the property is really infeasible as a residence. It was my comment that the house should be, that the property should be build as a residence in terms of the floor plan and then used as a medical facility so that it can be easily converted to residential use when Dr. Howard is no longer going to be using the property under his conditional use.

Linda Rogers: Does anyone else have any comments?

Charles Adams: The site plan that you are looking at is only modified very minorly compared to the plans that have been in everybody's hand from May. The only things that were addressed were the few minor things that were said that could be taken care of after preliminary approval during the construction process. I just thought it would be to be informative to know that each of these things could be addressed and are addressed and presented to you in that fashion. I just wanted you to understand that, that the site plan is and has been the exact same site plan, within reason.

Linda Rogers: Does any members of the board have any more questions or comments?

Bill Brierly: I would say for my part that I do appreciate when a person does address the comments of the Town Engineer and our Planners, item for item, like you did. I do appreciate that. Thank you!

Linda Rogers: Does anyone else have any questions or comments? If not, I'll entertain a motion to close the public hearing portion of this.

Dean Sherman: So moved.

Linda Rogers: I have a motion is there a second?

Louise Frey: Second.

Linda Rogers: We have a motion and a second, all in "Favor".

Robin Davis: I didn't hear Louise Frey say that the motion to second.

Linda Rogers: Okay, we'll start over. Would someone like to make a motion to close the public hearing?

Dean Sherman: I'll make a motion we close the public hearing.

Louise Frey: Second.

Linda Rogers: We have a motion and a second to close the public hearing, all in favor say "Aye". Opposed – None.

Motion Carried to close the Public Hearing at 7:34 PM.

### **Item # 2 – Call Meeting to Order**

Linda Rogers called the regular meeting to order at 7:34 p.m.

### **Item # 3 & 4 – Additions or Corrections/Approval of Agenda**

Linda Rogers: Are there any additions or corrections to the agenda? If not, I'll entertain a motion to approve the agenda as submitted.

Bill Brierly: I motion that we approve the agenda as submitted.

Linda Rogers: Is there a second to the motion?

Dean Sherman: I'll second that.

Linda Rogers: We have a motion and a second to approve the agenda as submitted, all in favor say "Aye". Opposed – None. Motion carried.

### **Item # 5 – Approval of Minutes**

Linda Rogers: Does anyone have any additions or corrections to the minutes as submitted? If not, would someone like to entertain a motion?

Louise Frey: I make a motion to approve the minutes as submitted, of the...what date? December 11, 2007.

Linda Rogers: Okay, we have a motion to approve the minutes of December 11<sup>th</sup> as submitted, is there a second?

Dean Sherman: I'll second that.

Linda Rogers: We have a motion and a second, all in favor say "Aye". Opposed – None.

Virginia Weeks: Abstain. I wasn't here for the meeting.

Linda Rogers: Okay. Approved with one abstention.

### **Item #6 - Business**

#### **a. Preliminary Site Plan Approval**

The applicants, Lesa and Paul Howard, are requesting preliminary site plan approval for a physician's office to be located at 506 Union Street. The property is currently zoned R1 (Residential) and is further identified by Sussex County Tax Map and Parcel # 2-35-14.15-16.00.

John Brady: Madame Chair, before we get to the business, could we just have a Roll Call of the members present so I can make sure the record reflects who is here and who is not here?

Linda Rogers: Sure can. We can start with Mr. Brierly.

Bill Brierly

Dean Sherman  
Linda Rogers  
Michael Filicko  
Louise Frey  
Virginia Weeks

Linda Rogers: Okay. So we review the comments of Mr. Kerr or shall we allow Ms. Weeks to make her comment? What's your pleasure?

John Brady: This would be the appropriate time for Ms. Weeks to bring up the question she brought up in the public hearing. Now is the procedure is in front of the board for your discussion.

Virginia Weeks: Sitting before us out of sight of Mrs. Frey and myself at least are 3 cardboard exhibits. One is a site plan with the some red lines on it we can tell, and the others are elevations of the building to be built. At present, we have not seen these plans. We can still not see them because they're 15-20 ft away from us down on the other side. The public has not seen these plans. These plans were not submitted to the board. Nobody on the board has seen these plans until this very moment. This is a difficult building for this town. It is huge; it is out of scale and we need to do everything we can to make it look as residential as possible. One of the things that I didn't like on the old plan was that there was no front door or porch the way there are on just about 99% of the houses on Union Street. I don't know if this plan has a front door or a porch; I can't see it and it hasn't been given to me. I find it unacceptable that we have a public comment when the public hasn't seen them and when the board hasn't seen them, we are being asked to vote on them this evening. Thank you.

John Brady: Okay, procedurally where we're at, this came in and was filed earlier in 2007. I believe it was initially filed in May. There was a planning and zoning hearing in June. There was a vote in July which after I reviewed it, I invalidated the vote because it did not meet the proper procedure in front of the board; sent it back from Council. You re-heard it in the fall, then it came back to Council. I state that to go under the procedure. During the fall, you adopted new procedures that said if things weren't in X number of days in advance, it would not be considered. This application was filed prior to that. As of 4:30 this afternoon, these three boards have not been officially submitted to the Town as revised plans as I understand that they are considered here tonight as exhibits to aid in the discussion. There has never been a ruling from this board on the procedures that exhibits cannot be used to aid in a discussion. However Mrs. Weeks, you're correct. If a majority of the membership of the board wishes to defer consideration so they can review the exhibits, that's fully within the power of the commission. So if you, if a motion is made and second to defer this until the February meeting, and a majority passes that, then that's a valid motion. You have the opportune time to make motions to consider or to defer.

Virginia Weeks: I would prefer rather than deferring it, I would like us to, I don't know if it's recess or whatever it is for 10 or 15 minutes to whatever it takes, so we can all study these and look at the plans. I can't see them. Can you see them Mrs. Frey? They didn't even submit 2 copies; it was just the one single copy.

Debbie Pfeil: If I may, I agree that I do not think my recommendation is the recess is not the answer. And if I'm correct, the engineers part of this was he got the comments from

the consultants, and what he wanted to do was show you an example of what he can meet in our comments. That's usually not done until your next submittal. You take our comments into consideration at preliminary for the next submittal. What he did was one step ahead of the game. And I would assume if the Chairperson or a member of the planning commission would ask the applicant if they are willing to allow us to vote on what was submitted, and not use this information tonight, I think that's the way you can proceed as well, as an option, because we cannot give you written comments as required on these boards in 15 minutes tonight. We have not seen them either. But you can make a vote on what was presented to you a week ago in your packets, and we can go through our comments and he can address the comments. You don't necessarily have to vote on those three boards in the seat, because none of us has seen those, and the public would need an opportunity, which is another reason I would not recommend you recess, and set a precedent, the public would need an opportunity to see those new plans.

Virginia Weeks: Well if that's the case, then I would rather vote for tabling this and doing it properly from the beginning, rather than having these be withdrawn, then come back and to make comments on things that may or may not be. I would just as soon have it tabled.

Debbie Pfeil: You can make that as a motion or Mr. Adams can also request that these three plans, that are the three boards in front of you, be rescinded from tonight's meeting and you proceed with what was presented to you in your packet; the public had time to make comments on. The applicant can request that if they want to proceed. It's up to the board.

Virginia Weeks: It's up to the board, Madame Chairman.

Linda Rogers: Well, I mean I would prefer to just take the three boards away and review the plans that were submitted because these apparently are changes that came from the comments. Is that correct; most of the changes on here came from the comments you received? If we shouldn't be looking at these, then take them away and let us review what we are supposed to be reviewing...just trying to help. So do you have any copies of the plans that were originally submitted other than we have? So I guess first we should hear Mr. Kerr's comments.

Bob Kerr: Good evening. The second item, I'll skip the first one, it's just, well the first item is the property is zoned R-1, Single Family Residential, and it a Conditional Use for a Medical Office was granted by Mayor and Council on November 5, 2007. The second item, paragraph 7.2.1.1 states parking shall not be permitted in front yard setback areas, except following the site plan review is provided for an article 6 of the zoning ordinance. For single family homes, parking may be permitted in the front yard setback are on approved driveways. Under all circumstances except for single family homes, a 4' wide area shall be provided between the adjacent side walk or public right of way and all permitted parking areas. Number 3, the front yard setback is 30' or the established building line. You need to determine what the setback requirements are for parking. Exceptions to the front yard requirements are found in section 5.6. One of the handicap parking spaces is within the front yard setback of 30' and part of that is in determining the established building line, you look at the houses along the street and what the existing building line is. There's not enough information provided; on this particular lot the building setback is a little under 10'; the existing building, but I don't have any information of what is on either side and I don't have the ordinance in front of me but I

believe it's the average of approximately 500' up-street of what the various setbacks are. So you need to determine what the building is or how you want the parking lot to be laid out. Item 4, they've shown...19 parking places are shown and 19 are required. Number 5, paragraph 7.2.4, sub-paragraph 1b allows parking areas to extend within 3' of a property line. On the plans submitted no dimensions from the parking area to the property line were provided but it scales between 1 and 4', so it does not meet the 3' setback in all instances based on scaling, so you need to decide what the minimum setback for the parking areas will be. And I had some concern that when you move in from the back property line, that would narrow the alley which is shown, or the driveway portion, which is shown to be 24' or when you move in from the north property line, which would be on the right side of the drawing that you may end up losing a parking place, so keeping 19 spaces and meeting all of the requirements was a concern of mine. Number 6, the method of screening; if you want screening of the parking area whether it be by landscaping or fencing, you need to review that, discuss that and determine what you want to see. Number 7, Union Street is a state maintained road; an entrance permit will be required, or at least a letter from the state Department of Transportation that a permit is not required should be presented prior to giving final approval. Number 8, the majority of the site, 86% is impervious area which includes the structures and parking. About 14% of the site is left for landscaping. Coverage is defined as the area covered by building or structures. Only 18% of the site are covered by a structure, so I think in an earlier memorandum that I gave you, I had the coverage was 70%, where I took the...it was greater than 70% because I took the pervious area; it's just the building that counts for coverage. It appears that any existing vegetable on this site will have to be removed in order to put the parking lot and new building in. The next item, number 10, would be a landscaping plan should be provided. No information has been provided on outdoor lighting of the parking lot. Storm water is shown to be an infiltration system; a series of pipes under the parking lot in which the storm water runs into and slowly infiltrates into the ground. This system would have to be designed to, and approved by the Sussex Conservation District, before the final site plan approval. One of the conditions of the, placed by Mayor and Council and/or Planning & Zoning on the Conditional Use, that the operating hours would be 9am to 5pm, Monday through Friday and I would recommend that a note on the drawing be provided stating that so that in the future it's not lost or misplaced from the site plan. A proposed sign location is shown, but no details are provided. Section 8.1 has the requirements. This would have to meet the requirements for an R-1 sign. This is still a residential zone, so it has to meet those requirements. And number 15, if the sight plan is given preliminary approval, then the applicant should be informed that the construction drawings and the final site plan need to be submitted for the Town for review and acceptance. Once that's occurred, and all the outside agency are obtained, then they can apply for the final site plan approval. And then there's also a list of the preliminary site plan checklist.

Linda Rogers: Does anyone have any questions for Mr. Kerr? For his comments?

Anyone? No?

Bob Kerr: Thank you.

Linda Rogers: Debbie, would you like to do your comments?

Debbie Pfeil: Madame Chair, do you want me to skip the same topic comments? I'll start with where to this is a Conditional Use by the Council on November 5<sup>th</sup>. I have a



list of several agencies that will be required for final site plan as stated in the letter. The setback, I agree with Mr. Kerr 100% that the setback of front yard parking would be easy for us to determine if the applicant would have submitted that on the plan. We would be able to determine what the front yard, or average of what they usually use. The planning commission would need to determine tonight, rather than just ask us if we have any questions. There's a couple items that we actually have to get through in our comments to make decisions on tonight; that is one of them. So that's the front yard setback is one of the items we need to get into discussion on. The other one is the open parking area may encroach which is, sorry, 2C on page 204 – may encroach on any required side or road yard to within 3' of the property line. This item needs clarification for the planning commission as well, because it would not be up to your consultants; we are just bringing it to your attention that it needs clarification from the planning commission. Landscaping requires at least 10% of the area of the lot usable for off-street parking, shall be devoted to landscaping with lawn, trees, shrubs and other material. Also have the loading and unloading requirements. Loading (unintelligible – 7:51:23) should be located to the rears of the structures in such a way to not unreasonably interfere with the movement of people and vehicles on right of way. Planning & Zoning Commission may allow the use of public right of ways (unintelligible – 7:51:33). This will need to be discussed with the applicant regarding the anticipated amount and type of deliveries needed to conduct their business, and it's at the discretion of the planning commission. Buffer and landscaping, I am as well with Mr. Kerr. Entrance and exit, Department of Transportation standard. The elevations, I do want to let them know that we have worked with the applicant from the first submittal in, actually before the first submittal was made, and there has been improvements from the submittal you haven't seen in the very beginning to what you have in front of you. We were definitely pushing for a more residential characteristic appearance. The applicant should be commended. The gazebo for employees to used should be adding an accessory structure; excuse me, that may be considered as an enhancement to the character of the neighborhood. The setbacks complies with the required setbacks. Density control table allows the maximum coverage as Bob's covered, to be 70% in R-1, and coverage is defined as the area covered by buildings or structures. Also, I did put the note for the signs as the sign location was depicted but we have not seen what type of sign and in section 8.1, they would need to comply within that code before we could sign off on the final site plan. So there are some items in my review I feel the applicant still needs to work on to bring back, or to be contingent upon or how you choose to proceed or table. But there are a couple items we need to go over with you to make decisions on if you just want us to go through those.

Linda Rogers: We need to establish a front yard setback. Is that done by the town or the applicant themselves? Does the town have to verify where it is? Doesn't someone from the Town have to go out and measure 500' in each direction and then come up with an average and say this is what it is?

Debbie Pfeil: If the applicant had it on their plan you could; it's signed off by a civil engineer so you could have that information but we don't have it in front of us. In some towns it's submitted by them; other towns it's put on the application. I believe the applicant has done some research on that if you did want to hear about it.

Linda Rogers: Are we allowed to hear about it?

Debbie Pfeil: On that particular item if you want to have some research.

Linda Rogers: Okay. Have you established what the average front yard setback is? Is it 500' of each...?

Dr. Paul Howard: Not within 500'. Within the immediate area.

Debbie Pfeil: 300'.

Linda Rogers: 300'?

Dr. Paul Howard: 300'. There is one, well from my recollection, there is another house and the church I think to the right, the left, there would be a few houses that are...the front porches are very close to Union, but we would take...typically we would take the measurements and put them on the drawings and show the average...

Linda Rogers: Have you established that average?

Dr. Paul Howard: Not the average, no.

Linda Rogers: No.

Debbie Pfeil: It's one of our comments too, I guess the question really is, is the average of 30 which is the correct number. And if the average is going to be less than 30 so they comply if it's not less than 30, then they would have to do some adjustments to meet the 30.

Linda Rogers: What's (unintelligible – 7:54:57) is less than 30?

Debbie Pfeil: According to the applicant. I haven't been out there and physically measured these.

Linda Rogers: It's less than 30.

Debbie Pfeil: Okay.

Linda Rogers: I mean I wouldn't tell you what it is but it's definitely less than 30.

Dean Sherman: 30 from the sidewalk?

Bob Kerr: No, it'd be from the property line and the 30' setback would exclude 1 of the parking spaces. I was just trying to verify, I think you have the, I was trying to determine if you have the ability to waive that and I just haven't quite found it. It was something that I wanted to make sure you discussed and now I have to remember...

Linda Rogers: But if the established front yard setback, let's just say is 15', I don't know what it is, we'll just pick a number, 15', and the parking is not in the front yard, correct or is it?

Bob Kerr: It is my understanding that if the setback was 15', this parking space would be legal, if that answers the question.

Linda Rogers: So the front yard has to be established by someone.

Bob Kerr: Yes.

Bill Brierly: A question. I think we talked about the gazebo that could be in play to add the parking space that would be taken away from the front if necessary.

Bob Kerr: The gazebo does not affect the parking because to put a parking place there, you'd end up backing into the other car. It needs that 20' square back there really is to keep you from parking where you can't get in or out.

Louise Frey: Mr. Kerr, doesn't the property have to be surveyed by a licensed surveyor in order to determine what the proper front setback is?

Bob Kerr: Mr. Adams has done that. He has the setback for the house that's on the property now. What we do not have are the setbacks of the houses within, or existing buildings, within 300' of each side of the property.

Debbie Pfeil: If I may ask an administrative question. If a house was to be built in R-1, and the front yard setback is 30' or, I'm just going to use the word "average", who

determines that when they come in for a building permit? Isn't your Code Enforcer going out there and wheel that off and it's validated by the Town prior to getting a building permit? So I think what we're asking here is are you asking us to validate that the information is true either this applicant has met the requirement or he has not and needs to comply. But that would have to be validated prior to coming for the final. Is that the direction you were headed?

Linda Rogers: Yes.

Debbie Pfeil: Okay.

Virginia Weeks: Since the new building, we don't have a drawing of the new building superimposed on the old building, and since the front, since we have no dimensions for the building, the front of the building where the glass porch is now are the three windows to the left of the building as we look at the drawings, correct? What I want to know is the back part with the two dormers and the three windows here, is that at the same place that this house...is the setback the same as the house has now, or is that being amended? In other words, is it following the same footprint in the front as the house has at this moment?

Dr. Paul Howard: Should I speak to that?

Bob Kerr: I can also answer that it is my interpretation of the drawing that the existing structure is the part that's closest to the road? The new structure where it's being added on appears to be at or greater than 30' off the property line. So the new structure sits behind the 30' setback; the existing structure sits closer to the road and is not being extended in that direction.

Virginia Weeks: So then this is really rather mute because that house has been there for 100 years and its part of the established...

Bob Kerr: It's not so much the house, it's the parking lot and the zoning ordinance says that the parking space can't be in the building setback unless you consider it and make an otherwise determination.

Virginia Weeks: Bob, at this point, how far back is the first parking spot from the sidewalk, or from the property line, please?

Bob Kerr: One moment please.

Virginia Weeks: Since we don't have any dimensions.

Dr. Paul Howard: Chuck, do you know the scale?

Charles Adams: It's about 20.

Dr. Paul Howard: 20 scale.

??(7:59:56): It's 10 scale.

Bob Kerr: It scales a little over 20', 20-21' from the property line.

Virginia Weeks: Well, then I would suggest to the board, if I may, that that be acceptable, 20' or 21-1/2', because the front door of the front portion of the building is only at 9.837', so it seems to me that that would be reasonable. Because the house more or less conforms to what's on the rest of the street for setbacks. I looked at it today. I didn't measure it, but I certainly looked at it. And if it's 20' from the property line, that gives a car a full length to pull to the front and not be in the way of anybody backing up. So, I don't know if I need to move or whatever, I would accept a 20' setback if anybody else...

Linda Rogers: Well, as long as they conform whatever the established setback ends up being, is the bottom line, and it appears that they're going to be further back than what the established building line's going to be. Is that correct?

Bob Kerr: Based on the 300' average, I don't know what the building setback would be if on each side it was 30' and this one, we'll say it's 10, that averages, I don't know I don't have my calculator....

Linda Rogers: I would venture to say that the houses on each side of it don't set back, sit any closer than 20' to the road. They're probably closer.

Bob Kerr: Then if they're 20, the average is going to be less than 20.

Linda Rogers: Exactly. So we don't need to make a motion or anything, we just, the towns going to verify that it stays within, it doesn't extend into the front yard setback and they'll establish where that building line is.

Bob Kerr: I don't know that the town as issuing part of the building permit is going to change anything that is approved on the site plan as far as where the parking is. They would verify that the building is in the right place but they are going to do it based on the site plan that you...

Linda Rogers: No, I'm saying that before we get this to final, someone in the town is going to verify and establish where that front yard setback is?

Bob Kerr: Yes.

Linda Rogers: And it will probably be less than 20'.

Bob Kerr: If you say so. I can't picture the neighborhood well enough.

Linda Rogers: Okay. The next thing Debbie that you really want to make sure we get clear?

Virginia Weeks: Madame Chairman, may I ask the engineer a question that I didn't think of asking when we were discussing buffers for a moment please?

Linda Rogers: Sure.

Virginia Weeks: Mr. Kerr, you talked about a buffer on the north and the south side. What about on the west side. Does that need to be buffered?

Bob Kerr: If you're referring to a landscape buffer that would be on all three property lines, the back and both sides. The buffer that I was referring to was the parking or paving is to not exceed or is to be greater than 3' from the property line, so that there's an opportunity to have a 3' grass or landscaped area; not paved right up to the property line.

Virginia Weeks: Right.

Bob Kerr: And part of that is that you end up if the bumper block isn't placed back from the edge of the paving, if you put the bumper block right on the edge of the paving, then the car is actually hanging over the neighbor's property.

Virginia Weeks: Right. What I'm noticing is that on the site plan that has been given to us it appears that the parking spots go all the way to the back line.

Bob Kerr: Yes, on the back it is...

Virginia Weeks: Is there room for that to be moved in 3' to have the buffer and still have enough room for the cars to back out and turn around?

Bob Kerr: I'd like to see a minimum of 24' between the parking space and behind it and...

Virginia Weeks: They only have 24'...

Bob Kerr: There's 24' presently shown so it could be a problem. It's not something that as planning and zoning I worry about but if I was the occupant of the building I'd worry

about somebody coming through my wall some afternoon, backing out of the parking spot.

Virginia Weeks: There's that but I'm also concerned although the area behind this house is a vacant field at present. Someday, somebody is going to build there.

Bob Kerr: Yes.

Virginia Weeks: And that's what I'm looking for; that's what I'm looking at because either a fence will be put up to protect them because nobody's going to want to look at the doctors parking lot and pay big bucks for a house. So, if, could you live with 23'? If we were to require a fence and a 1' setback; 1' away from the fence.

Bob Kerr: Well, the code requires 3'. It, you could use a parking lot with less than 24'; it's sometimes requires if you have a larger car you can't simply pull into the spot or simply back out; you have to do a 3 point turn or something to get in or out of the space. If the parking lot isn't filled, it's not much of a problem. If you're the 19<sup>th</sup> car coming or going it gets a little more difficult.

Virginia Weeks: The reason I'm asking is that I was thinking since a landscape buffer won't work back there because there's obviously not enough room, should we protect the land on the other side even though today it's an empty field, by putting a fence up.

Because if we don't do it now, when that field is occupied a fence will go up and it will interfere with the parking as it is now, on the...

Bob Kerr: That was one of my questions that what you would like to see along the property lines as far as screen whether it would be all landscaping or all fencing. To put a fence down all 3 property lines is going to make it look kind of boxed in.

Virginia Weeks: Absolutely.

Bob Kerr: If it's a combination I don't claim to be...landscaping is not my specialty. I know enough to be dangerous. The engineer in me likes nice straight lines and you know they tell you that's the last thing you do with landscaping, is to plant a row of trees along a property line. It just doesn't happen in nature.

Virginia Weeks: I'm just trying to get a win-win situation here so the property behind is protected and the doctor can have his parking. And I'm asking you if we put a fence up, which would mean the cars would have to stop before that fence, can you, can he live with 23' instead of 24.

Bob Kerr: The requirement for a fence or screening is more or less separate from the 3' buffer between the edge of the paving and the property line. There's plenty of room to put a fence in there in a 3' wide strip of land. It's a matter of whether you want a fence or landscaping. The offset of the 3' is kind of a separate issue and it becomes Mr. Adams problem to make the parking work. It might be that the building has to shrink by 3'; that's not for me to say one way or the other; he has to come back with a workable parking lot.

Virginia Weeks: Thank you.

Bob Kerr: It think Debbie wants to add something.

Debbie Pfeil: If I can do some clarification there. The 3' is not a landscaping buffer. The 3' is an encroachment within your side or rear yard. The landscaping requirements, there's actually two categories – one a commercial parking lot requires a minimum of 8% of the lot, so it doesn't actually say on all 3 sides and on the buffering it truly says it's up to the planning commission; it doesn't say what type but I want to make sure that 3' item is a separate item and that right according to this plan right now hasn't been met.

Virginia Weeks: Thank you.

Linda Rogers: I know this question was asked at the time of the public hearing and I don't remember what was said, but Dr. Howard, approximately how many patients do you have there an hour?

Dr. Paul Howard: Well that fluctuates greatly, when you ask by the hour. Out of the average day is said...

Linda Rogers: You schedule appointments for approximately how many people in a normal day, in the entire day?

Dr. Paul Howard: Each day is between 30 and 35 patients.

Linda Rogers: In the entire day?

Dr. Paul Howard: In the entire day.

Linda Rogers: The entire day. So you most likely don't have, even at a max, 8 patients per hour?

Dr. Paul Howard: Correct.

Linda Rogers: Correct?

Dr. Paul Howard: Absolutely.

Linda Rogers: And you have how many staff?

Dr. Paul Howard: We have 5 staff.

Linda Rogers: So 5 staff...

Dr. Paul Howard: Well that...right.

Linda Rogers: 5 staff, 8 patients...

Dr. Paul Howard: 5 cars, that includes mine.

Linda Rogers: Right. 5 staff, 8 patients, 13 cars. We still have some parking places that wouldn't, you wouldn't necessarily see your parking lot completely full.

Dr. Paul Howard: You would hope unless there's emergencies that back you up sometimes you're running behind.

Linda Rogers: I understand that, so occasionally. That's what I wanted to know. Thank you.

Virginia Weeks: Madame Chairman, may I add to your question please? Are you going to hire somebody else to do hearing tests?

Dr: See....

Virginia Weeks: Because that was part of our discussion at our last meeting.

Dr. Paul Howard: One of our...we already have people doing hearing testing in the office.

Virginia Weeks: That's included in the 5?

Dr. Paul Howard: We are...correct. That's correct.

Virginia Weeks: Correct.

Bill Brierly: I'm uneasy about having parking go right up to the property line, a solid wall of parking going right to that back property line. As was already suggested, I would favor shaving 3" off the back of the building to allow for 3' off that property line and back.

Linda Rogers: Isn't the 3' a requirement? You have to have 3' of space?

Virginia Weeks: Madame Chairman? And if it is a requirement, who decides, us or the Board of Adjustment?

Linda Rogers: Decide what?

Virginia Weeks: If he looks for relief?

Linda Rogers: Well we'll just find out if it's a requirement first.

John John Brady: Madame Chair, in going to 7.2.4, location required parking spaces in the zoning code, in R-1 it states "open parking areas may encroach on any required side or rear yard to within 3' of property line except that in existing lots with 6' side yards, required parking spaces, upon the approval of the planning commission, extend to the side or rear lot lines". The way I interpret that is that on a type application you have for preliminary site plan approval, when this was re-written several years ago, it was to not require an applicant to go both in front of the Board of Adjustment and the Planning Commission, but give the Planning Commission the final say on this matter.

Linda Rogers: So there has to be a 3' area between the end of the paving and the property line. Is that what that's saying?

John Brady: Unless, except an existing lot with 6' side yards required parking spaces may, upon the approval of the planning commission extend to the side or rear lot lines. So the 3' buffer, you have the authority here to waive that if you should so desire.

Linda Rogers: To waive the 3' buffer?

John Brady: To waive the 3' buffer. That's in your discretion, and the way I read this is looking normally, Miss Weeks' is correct; that matter would go to the Board of Adjustment. However, in this situation it looks like when they wrote this zoning ordinance, that they wanted the board, the planning and zoning to consider everything dealing with conditional use, and so if you believe, if you feel this is necessary to waive this, you have the power to do so. It is a discretionary, it is not a mandatory.

Linda Rogers: Well, the applicant doesn't intend to blacktop to the edge of the property, correct?

Virginia Weeks: In the back he does.

Charles Adams: Upon this comment, we suggested on this latest drawing to put the bumper stop at 17' and let 3' of grass be between the bumper stop and the property line, so that the bumper may go to or near the property line but at least you would have 3' of grass space between it.

Debbie Pfeil: But Mr. Adams, you wouldn't be in compliant then with 10x20 paved space.

Charles Adams: Well the 20 would go there, it just wouldn't be pavement.

Debbie Pfeil: Correct, so if there's an ordinance that say it has to be paved 10x20 spaces is standard parking, you wouldn't be in compliance; you're now going to be in default of that regulation.

Charles Adams: That was just our suggestion upon your comment.

Debbie Pfeil: So if the space has to be 10x20, and he's asking to have a portion of it grass, that I believe and I'd have to just double check while you guys are talking, I don't know if that's in the prevue of the planning commission.

Charles Adams: We could certainly suggest that a fence as suggested earlier in combination of this grass strip along that rear property line.

Louise Frey: Madame Chair?

Linda Rogers: Yes.

Dr. Paul Howard: I don't know if it would be appropriate to mention it know, I don't know how familiar all of you are with the property, but at one time a lot of the land there was farmland and you know there are hedgerows and on that property line that we're

talking about, there's several large trees that are on the property line. I don't know which line they fall on per say, they're probably right on the property line like a hedgerow would be. And so, in part of that, building a fence, if you were to do it right on the line would not be a practical thing because there are trees in the way, but I just wanted you to know that there are several large trees on that property line that, unless the adjoining property owners no they're mine and does something with them, there's no intention of doing something with them, so that would be part of that line. I just didn't know if that would be important to your consideration.

Louise Frey: Dr. Howard, is there any way that you could scale down the addition, make it smaller?

Dr. Paul Howard: It would be difficult; it's on a par with the size of my office that I'm using now. Nothing is impossible but people in the office now are cramped for where do we put this, where do we put that type of thing. It would be difficult; let me put it that way. Everything can be done, it will be difficult and there would be...frankly...

Louise Frey: Is your office now in a residential zone?

Dr. Paul Howard: There are residences on the street, yes.

Louise Frey: Is it a residential zone?

Dr. Paul Howard: I don't know. At one time I think it was. I suspect that it was. I don't own the place. So I suspect that at one time, it was all residential, knowing where it is. If in any case, we are, I think it was April Debbie that we made an initial applications, from my perspective we're 9 months into this and at times some of the questions that are brought up are questions that frankly have been covered before. It's not all of it new ground. This site plan was submitted in May. The changes were very, I think from my perspective as a layman, not major changes and changes that were made at the suggestion of the Town so to speak. I guess what I'm getting at is you're asking me to go back to the, to have new blueprints drawn up and these blueprints that are here, the town has had to those for a while. They are unchanged. I don't know, if you didn't get them, I don't know how that occurred. We have submitted...

Linda Rogers: (unintelligible – 8:19:40)

Dr. Paul Howard: Oh, okay. I misunderstood. But my point is from my perspective we're 9 months into this process and if I have to go get new blue prints and kind of start from square one in a certain respect, it does kind of make things difficult but, if you know what I mean. Yes, anything can be done; anything can be done.

Bill Brierly: Dr. Howard and Mr. Ash, would it be possible instead of putting up a fence, giving the fact that there are some trees there now, to have a small hedgerow, something like an **avervite** there; is there enough room?

Dr. Paul Howard: From my perspective, I think there is. You have to ask Mr. Adams, but I think there is.

Bill Brierly: But in addition to that, in the parking lot, could you also put in some ornamental trees, something like dogwoods that would not, of course be large, yet still add to the aesthetic appeal of the building.

Dr. Paul Howard: Yes.

Bill Brierly: Not just the building but the site.

Dr. Paul Howard: In a word yes, and I personally feel a fence around the perimeter would be very unattractive.

Bill Brierly: I agree. So...



Dr. Paul Howard: And I'm not sure that we're protecting the neighboring properties any better than what you're talking about. I've seen people drive their cars through walls as was brought up before.

Bill Brierly: At what point Bob, Debbie, Council, do we make that suggestion of the hedgerow and the ornamental trees and the parking lot?

Virginia Weeks: Madame Chairman?

Linda Rogers: I think Bob's getting ready to make a comment, then you can have the floor.

Bob Kerr: In the answer to your question would be that when you make a motion that it contain the conditions that you wish to place on the preliminary site plan and that's some of the things Debbie and I are talking about that we'd like to know your feelings and how you'd like to see the property approved if that's what you so decide.

Virginia Weeks: Madame Chairman?

Linda Rogers: Yes.

Virginia Weeks: Without taking a vote, can we hear what the feeling of the, I don't know if this is legal Mr. Brady, what the feeling of the commission is about the buffer, individually, how people are feeling? Is that it, is that acceptable?

Linda Rogers: Well, that's not a problem. Your feeling is?

Virginia Weeks: My feeling is that I think they should have the full 3' buffer.

Linda Rogers: Fenced or not fenced?

Virginia Weeks: And that does not include landscaping. Landscaping is another issue, but the buffer I think...

Bob Kerr: If I may, it's better to refer to it as the setback. It's a 3' setback from the paving to the property line.

Virginia Weeks: I think that the 3' setback along the property line is the minimum that we can require, and should require.

Linda Rogers: Miss Frey?

Louise Frey: No comment.

Bill Brierly: And if that 3' setback is required, will you still be able to have the 19 parking spaces that you are requesting? And again, sorry Robin.

Charles Adams: The parking, it would just affect that one section of building that sticks out closest to the property line. So you might lose one space?

Charles Adams: No you wouldn't lose the space, you would lose square footage of the building; the structure would have to be changed, the blueprints would have to be changed.

Bill Brierly: Okay.

Charles Adams: Along with it. And the floor plan would have to be redone, probably the entire first floor there. I did see one area of change that could be made without changing the building if you leave that one section of the building that protrudes closest to the rear line and leave that and come further, not parallel to the back line, giving more and more land. As you proceed toward town, it would go from the 0-1' to 3' or 4' and then directly in back of the building if you left it as it was, it would have to be 1' or less of the requirement. That could be done if it was approved by you all.

Linda Rogers: Ginny, what you're saying is you want to see 3' on all three sides remain green space?

Virginia Weeks: Yes, I want to see the buffer.

Linda Rogers: Before the parking lot starts, correct?

Virginia Weeks: Yes, exactly.

Linda Rogers: Okay. Mike, your feelings?

Michael Filicko: I think I expressed my views as far as the hedgerow and the ornamental trees in the parking lot if that can be done and still maintain the amount of spaces that you need.

Linda Rogers: He's not trying to change spaces, we're talking about having a 3' grass area here...

Michael Filicko: Right, right a 3' setback there, yes.

Linda Rogers: Yes. I would like to see the 3' of grass area.

Michael Filicko: Now can you do that without changing, totally changing the building?

Charles Adams: The fire marshal would require 24' of back-up space and the 20' requirement, total of 44' and that's about what you have from the existing building to the rear line. Again, when we did the site plans, this was not pointed out to us as a requirement at that time. I'm not sure, you know, what went wrong there but it was not pointed out at that time with the original site plan review on the Town of Milton side.

Linda Rogers: Mr. Brady?

Michael Filicko: So, was that an error on our part that that was required?

Linda Rogers: I'm getting ready to ask that question. Mr. Brady is it in our zoning ordinance that you can or cannot pave all the way up to the property line and do we have the right to tell them we don't want them to?

Virginia Weeks: Linda, I know that when I built my house, I was not allowed to have any sort of permanent...

Debbie Pfeil: We can't hear you down here at all.

Virginia Weeks: I was not permitted when I built my house to have permanent or hardened surfaced area within I think it was 6' or something like that of the side lot line; that is why I have un-cemented pavers. I could have pavers, but I couldn't make them permanent and I couldn't cement it and I couldn't hard-cap it. And that's why some of the pavers in front of my house are cemented and some aren't.

Linda Rogers: I'm just checking to see if we legally get what where...

Virginia Weeks: I'm just telling you what the ruling was on that.

Charles Adams: I would like to just say as far as the drainage goes, all of the drainage from the pavement will be directed in toward into the property and in to the drainage system within the property itself. No direction of drainage will come off of this parking lot toward any of the rear sides of the properties. I just wanted to confirm that.

Virginia Weeks: I'm just saying that was what I was told by Eric was the requirement.

John Brady: Okay, I've been waiting to jump to answer a question, two questions ago.

In the comments, and I guess I'm a pack rat, because I'm looking at Mr. Kerr's comments of May 24, 2007, at number 8, paragraph 7.2.4 sub-paragraph 1, allows parking areas to extend within 3' of the property line. Sub-paragraph 2b requires a minimum setback of 6' from residential commercial use district. No dimensions from the parking area to the property lines are provided although the setbacks appear, on page 2, to scale between 1 and 4'. The commission should decide what the minimum setbacks for parking areas from residential property lines will be. Remember I ruled in July and then back on a remand in October, or November, that when you looked at the plan that was submitted it was as built plan with changes but you did not go over the comments at that

point. This is the first meeting that the comments have been discussed. The ordinance has been in place since before the application was filed, so I'm a little worried when I hear this is the first time it's been heard tonight or seen because I'm holding a memo from May 24<sup>th</sup> where it was referenced and the people were put on notice.

Virginia Weeks: Mr. Brady may I ask a question? I agree with you that this has been going on way to long. However, it seems to me that we had a meeting, we made a decision, it went to the Council or it came back to us for a reconsideration of the conditional use at which meeting we were told not to pay any attention to the plans because we were not doing site review.

John Brady: Correct.

Virginia Weeks: So as far as I can see, this is the first time we are really addressing a preliminary site review.

John Brady: That's correct.

Virginia Weeks: So, all these are new questions, right?

John Brady: They're new questions but to say that we weren't aware of this for the applicant, my concern is, with all due respect, this has been out there since a memo from May.

Virginia Weeks: I agree. Thank you very much for pointing it out.

Michael Filicko: Mr. Adams, I apologize for mispronouncing your name, I called you Mr. Ash.

Charles Adams: I would like to...I didn't receive these comments that we are speaking of.

Linda Rogers: So, another words, the ordinance says they have to stay 3' off the property line anyway, correct?

John Brady: (unintelligible – 8:31:29)

(Talking amongst members)

John Brady: I take you back to 7.2.4.1b, because it's within your discretion after you read that section of the zoning code as to how you want to proceed.

Virginia Weeks: That's why asked if you could get a consensus of how the board felt before a motion was made.

John Brady: I think 4 members of the commission have commented, I believe there's two left to comment.

Linda Rogers: Dean?

Dean Sherman: I'm unclear exactly on what the criteria is for us to waive that 3'. I just didn't understand what Mr. Brady was referring to, something about an existing lot with a 6' setback; I didn't know if I understood that correctly or not.

John Brady: This is an existing lot. This is not a new lot that has been designed. This existing lot appears to have 6' side yards. Since a conditional use has been granted, it says here that open parking areas may encroach on any side or rear yard within 3' except in existing lots which this appears to be with 6' side yards which from the original plans appear to have 6' side yards on each side of the original building, then required parking spaces may upon approval planning and zoning extend to the side rear lot line. So what they're asking for is to go the full 24' back because of the 20' that is required by the fire marshal and the 10 x 20 spaces, they need all that space to go to the end of the line. They did request that you leave the last 3 inches or 3 feet unpaved, well, our other ordinance

says you can't do that, under 7.2.1 the general requirements doesn't give you the variation, the ability to vary the size of 10x20.

Linda Rogers: So it has to be 10x20 paved?

John Brady: Paved. The only thing it says that you have the ability is to decrease the parking spots, but I don't think helps you for that back side. Did I help make it any clearer Mr. Sherman?

Dean Sherman: Yes, I understand what you're standing. This is an existing lot so if we felt it appropriate, we could actually waive that 3' setback for the paving.

John Brady: Correct.

Dean Sherman: But if this was a new lot...

John Brady: You couldn't.

Dean Sherman: We could not.

John Brady: So it's a discretionary matter between you so the motion, whatever the consensus is on the motion, it is what it is.

(Talking amongst members)

Dean Sherman: I guess if I had to weigh in at this point, I would have to say that I would okay with the paving going up to the lines as long as we maintained those, what looks to be like 3 mature trees. If those 3 trees needed to be removed, then it would make sense to drop back 3; to create a little bit of some type of buffer there, but I think, it's hard to tell from looking at this plan, but if you visited the site, I bet those 3 big trees dominate that line and create a much bigger buffer than we can realized from this drawing. In taking that paving through lawn is probably not the most popular assessment but I think it would be okay in this case just because of those 3 big trees. Not necessarily because this is an established lot.

Michael Filicko: I believe we should do everything we can to keep those trees.

Bill Brierly: I believe strongly that the 3' setback on all three sides; the sides and the back.

Linda Rogers: Okay, so we have a consensus of 5 to 1 that you are going to be required to have a 3' setback on all three sides.

Virginia Weeks: Thank you.

Dr. Paul Howard: Madame Chair, may I ask for clarification?

Linda Rogers: Sure.

Dr. Paul Howard: Just a matter of clarification for me. Would pavers on the perimeter still be, I mean we're talking strictly the blacktop? Would pavers be allowed around the perimeter, I'm asking?

Linda Rogers: So would the board be acceptable if pavers were in the 3'?

Virginia Weeks: It's the...the problem is not what's...we're not addressing what's in the 3' right now, we're just addressing is there 3', correct?

Dr. Paul Howard: Right. But my point is there are parking lots that are pavers and it's not impervious. I thought some of the question was permeability, is it not?

Virginia Weeks: No, the question is...

Linda Rogers: What I think we're required...

Dr. Paul Howard: I'm asking; that's what I'm asking.

Linda Rogers: I think they have to be impervious, correct?

Bob Kerr: No, I believe you're ordinance says it has to be dust free, which means it essentially means it has to be paved. The entire parking lot could be pavers. The...I

don't think...the purpose of the setback is not to allow a different material of construction within the setback. The setback is to say nothing is parked within that. It's simply to provide a slight open space to protect the adjoining property. If the adjoining property also was a parking lot, would you like it to be right up to the property line also?

Linda Rogers: So do the majority still agree we'd like to see a 3' of green space around the 3 sides?

Virginia Weeks: I would.

Bill Brierly: In the back, just to clarify this again for me please. There isn't any space at all?

Linda Rogers: No.

Debbie Pfeil: Look at the...you see how the plan is?

Bill Brierly: But there are 3 trees there?

Bob Kerr: Well you can't pave up to a tree and expect it to live it is within the property.

Virginia Weeks: Once he paves, the trees become questionable.

Bob Kerr: If the trees are on the property line and you pave up to the property line, the tree has to go.

Michael Filicko: Well, we need to do something creative as far as the paving goes around those trees because it's very important to save those trees.

Virginia Weeks: Michael, Madame Chairman, may I address Mr. Filicko's comment please?

Linda Rogers: Yes.

Virginia Weeks: All that the doctor has to do to remedy this situation is to remove this small portion back here of his building. Then there would be plenty of room for the 3' buffer and for him to make the required turns and have the required area.

Michael Filicko: Show me on yours.

Virginia Weeks: This is the proposed building. This is the back of the building. This is the air conditioning unit. So this is all open here. All he needs to do is to move, shave off here to make up for the difference. He's got the space here. It's just his little piece where doesn't. So he just has to shave that back a little.

Michael Filicko: How many feet is it from...

Virginia Weeks: I have no idea; he didn't give us a plan with any dimensions on it.

Michael Filicko: Paul, from the air conditioning unit to the corner of the building...

Bob Kerr: It scales approximately 11'.

Michael Filicko: So, if Dr. Howard took 3', went in 3' toward the building; that would give him the 3' that he needs, correct?

Dr. Paul Howard: Sure.

Bob Kerr: The architectural plans that were submitted do show that offset to be 11'.

Taking 3' off the building would allow everything to move in 3', however, don't confuse the 3' being the minimum needed to save those trees.

Debbie Pfeil: Gentlemen, the engineer is addressing the commission, could you please listen?

Michael Filicko: I'm sorry. I apologize Bob, I did hear you say though that the trees may not be saved.

Bob Kerr: Yes, the 3' setback does not guarantee the trees will be saved. I don't know the size of the trees. I don't know where they are in relationship to the line. So if the tree was a foot and a half inside the property line, to the center of the tree, and it's a 3'

diameter tree, then the edge of the paving is going to go right up to the tree. If the tree is a 5' diameter, you know, I don't know the size of these trees, I don't think they're that big, but please understand that you need a certain amount of space from a tree to the edge of paving.

Michael Filicko: Correct.

Bob Kerr: Typically, in some jurisdictions, you can't pave under the drip line of a tree that you are going to try to save. But that would be essentially eliminating all of the parking spaces in the back if you're trying to save a large tree. The other thing that, I'm jumping ahead, but the show a storm water infiltration gallery right up against the property line. Well that would destroy all the roots of any trees growing along the property line, so that needs to be relocated away from the property line. And I probably shouldn't have brought that up because the one issue is simply do you want a 3' setback; that's a question, just yes or no. Then we move on to do you want, there's many issues, but do you want a fence or do you want landscaping in 3'. If you don't want 3', then the second question doesn't apply because there isn't room for it. But the first question is simply do you want a 3' setback from the property line to the paving.

Linda Rogers: That question being asked very directly. Do you want a 3' setback from the front, from the property line to the paving? Ginny?

Dean Sherman: Excuse me, the consensus is they do. Okay?

Linda Rogers: They do.

Dean Sherman: So let's create a 3' green area on the west property line and maybe the engineer can make that work; just back up that row of parking to create that 3'. If need be, they'll have to shave the back of the building, redesign the building, which that's certainly doable. I just brought this up, I don't know if we have any ability to soften the 19 parking space requirements; if we don't, then I think if we, the potential is that if we back those row of parking up on the west side, we may start impinge on the final parking place on the south side. And if we lose that one, we could just add one over on the north side. Or we could just relax it from 19 to 18.

Bob Kerr: Yes, if the west portion of the parking moves eastward more than 7 or 8', it would impact on the southern parking places. There is also room to possibly add one on the north side of the building. There could be one space up right along the building on the north side so if one on the south side were to be eliminated because of moving, then there's possibility of moving it. As far as shaving area off the building, yes it would require a re-design of the building but there's nothing that says the building couldn't extend further north as long as it stays within the setbacks or also in the area of where the air conditioners are that there couldn't be a slight adjustment. Also, the new section of building in the front could also be moved slightly toward the road.

(Talking amongst members)

Bill Brierly: I would favor considering putting one parking space in play, so to speak, to make the rest of this work if necessary.

Linda Rogers: But the 3' movement doesn't affect any of the parking anyway. It only affects the building, correct?

Bob Kerr: I believe that is correct.

Linda Rogers: Okay. So the next question is do we want landscaping or fence?

Bob Kerr: That would be correct, yes?

Linda Rogers: Okay. So we've established...

Bob Kerr: Or a combination.

Linda Rogers: Okay. We've established that we want to keep the 3' grass buffer around the property. Do we want the west side to be fenced or do we want it to be landscaped or both?

Virginia Weeks: Madame Chairman if I may, I don't care if it's fenced or landscaped. I'm concerned now that Bob has brought it up that those three trees survive. So I think that, and if we allow landscaping, it has to be to a minimum height at planting of 5' and it be something like arborvitae or something; that he give us a plan that shows a solid 5' high wall of green in lieu of fencing.

Linda Rogers: So you want it to be a hedge more or less?

Virginia Weeks: Exactly.

Bob Kerr: Just to point of clarification, unless Mr. Adams can state the location of the trees, I don't know that we know whether they are on this property or not. They're so close to being shown on the property line, that from the drawing I can't say that they are on this property. So the adjoining property owner could come along tomorrow and cut them down and their gone.

Virginia Weeks: I understand that but I think we need to do as much as we can on our behalf, on our side of the fence to preserve them.

Debbie Pfeil: We don't know that their on this side.

Virginia Weeks: All's I'm saying is we can't allow parking or solid stuff up there. We have got to have dirt and grass and green. That's all I'm saying; anything that will not damage the trees; that doesn't mean they won't be damaged from the other side but we certainly don't have to damage them.

Michael Filicko: Bob, that is correct the way the zoning laws read now but they will be changed in the future in regards to saving trees in the Town of Milton as well as planting trees.

Bob Kerr: We have to work with the zoning ordinance of today.

Michael Filicko: What we have now, yes, I realize that. But in working with the zoning laws as they stand, we still want to do what's in the best interest of the Town. Agreed?

Linda Rogers: Yes. So, Miss Frey, would you like to see fencing or landscaping or both or either?

Louise Frey: I'd like to see the building smaller, but if I have to, that's the only choice of revision, then I guess landscaping.

Linda Rogers: Could you talk into the...

Louise Frey: I would like to see the building scaled down, but if you're asking a question about what I'd rather see landscaping or trees or fencing, landscaping.

Linda Rogers: Okay. Mike?

Michael Filicko: Mr. Adams, Dr. Howard, of course I would like to see landscaping. At what point will you provide us with a landscape plan in these continuous meetings? Is that okay to ask?

Dr. Paul Howard: I don't know.

Linda Rogers: We just have to require them to submit one.

Dr. Paul Howard: Are you asking that I get something drawn up by a landscape architect?

Michael Filicko: At some point.

Dr. Paul Howard: That is a requirement in the town ordinance that you have a landscape architect to do that?

Michael Filicko: I don't think it is, Dr. Howard.

Dr. Paul Howard: No. Another question is...

Michael Filicko: Dr. Howard, it doesn't have to be a landscape architect, just a plan.

Virginia Weeks: I believe, Attorney Brady, I believe we can ask for a professional landscaping plan, may we not? 7.14 something rather...

John Brady: In the preliminary site plan's requirements, under 6.15, looking at I, provision for buffer area and other landscaping, okay. That is what it says for preliminary. For final site plan approval, and you have part of it is next thing you do when you look at all of that, you look under number 4 for the preliminary site plan and you have a response addressing your motion, letter e, adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands. That is...

(Talking amongst engineers/members)

John Brady: And under 7.14 which is on page 64 of the zoning ordinance, under intent, the planning, the last paragraph, the planning and zoning commission may require that a professional, licensed landscape architect prepare plans under this section. This is a discretionary determination that the commission makes.

Virginia Weeks: Exactly. Thank you.

Dr. Paul Howard: Would it be out of order to ask something of Mr. Brady, as to protocol?

Linda Rogers: Ask.

John Brady: Go ahead.

Dr. Paul Howard: If I go back and get blueprints redrawn, we shrink back the building to allow for that parking issue. I believe plans have to be in 21 days ahead of meeting, which means I have about 10 days to do that, and that comes here, and if it's approved and it goes to the Town Council again. Now I'm just wondering, I'm trying to squeeze this into my brain, the time frame here when we're already 9 months into it; I want to know what steps should I expect and encounter along here, and I think it might be totally unreasonable for me to expect that I can get the plans redrawn in 10 days and resubmitted 21 days ahead of the next meeting. Do you follow me?

John Brady: I understand your question. I am going to defer to the engineer and the Town planner to answer that because they can...I can give you the legal answer, which is short, but they can give you a better descriptive answer.

Bob Kerr: And then John will correct me. If planning and zoning gives you approval, preliminary approval this evening, you would then prepare construction drawings and up-teen outside agency approvals; that would include the DelDOT entrance permit; the Sussex County Conservation District which is your erosion, sediment control and storm water plan; fire marshal approval; I think that maybe it for this but don't hold me to it because I'm just pulling...DelDOT I said. Those, once you get, and at the same time you would make the changes to the site plan and resubmit to my office and to Debbie's office for our review of the drawings. Once we are satisfied that the conditions placed by planning and zoning on the preliminary approval have been met, we send a letter to the town and notify you that you can then submit drawings if they're in by the first of the month and that means all of the outside approvals and the comments from Debbie and I



have been met. The drawings can be submitted to be placed on the next planning and zoning meeting. It is sometimes a 2, 3 or 4 month process or a year to get the outside approvals. There's nothing that we can do as a town to speed those outside agency approvals along and it does take time. I'm going through one right now that's about the 3<sup>rd</sup> or 4<sup>th</sup> time it's been back and forth through my office. It's much bigger than this but it just takes time.

Dr. Paul Howard: And I think another part of my question is when we leave here tonight, I will have specific things that I can do to win approval presuming that DelDOT and Soil Conservation?

Bob Kerr: Yes.

Dr. Paul Howard: In other words, I'm going to leave here knowing okay, if I shave these 3' off and if I do this, and I do this...

Bob Kerr: Mr. Brady will correct me if I'm wrong, but if planning and zoning...

Dr. Paul Howard: Why is it going to be multiple readings for another 10 months? That's all I want to know.

Bob Kerr: If I may, hopefully it's not. If you get preliminary approval tonight with a list of conditions, those are the conditions that apply. Now if one of those conditions is submitting a landscape plan, that may have to come back and be reviewed separately, but essentially the...once the preliminary approval is given and you meet those conditions, it comes back almost as a rubber stamp. Those documents, once they're...they go through my office and Debbie's office and the outside agencies, that's more or less the final approval for things that they have specifically asked that you don't have this evening; if they want to see landscape; if they want to see something...

Virginia Weeks: Dimensions.

Bob Kerr: Something other than that. If they're very interested in the storm water or something and there's some question that comes up tonight that we don't have the answer for because soil conservation hasn't, but once it comes back to planning and zoning the last time, and they give the final approval, it does not have to go back before Mayor and Council, so the final approval is this body. But it does require all those outside agencies before they can react.

Dr. Paul Howard: Right, I understood that. Thank you very much for answering.

John Brady: Dr. Howard, let me just now put the legal part of it in. What Mr. Kerr said is presumed that they grant preliminary site plan approval. The commission has, can either grant it, deny it or table it. If they grant it, then with condition, they're the conditions that you have to work on before you come for final site plan approval, but they are the conditions that are reviewed by Mayor and Council next. And Mayor and Council...I'm sorry...by the construction. What I'm trying to say is, Mr. Kerr stated what would happen if they passed it tonight; recommended it...if. I just want to make sure that it's a big if, and I'm not saying that; I'm just saying that until they vote I have no idea what the motion is going to be. If they vote to table it for a month to look at other things then it comes back up on next months agenda. If they straight out table it, it sits till next month. If they make a motion to approve it, then you go forward from here and make the changes and conditions that they suggest. Till they make a motion, I can't tell you what that means.

Michael Filicko: So Mr. Brady, a question for you. If we so choose, we can grant Dr. Howard approval based upon certain conditions?

John Brady: That is correct.

Robin Davis: Preliminary.

Michael Filicko: Preliminary.

John Brady: Preliminary site plan approval based on conditions and could be condition 1, 2, 3, 4, 5 and 6. Normally conditional site plan approval, condition # 1 is that reviews are done by the fire marshals office, soil conservation district, all outside agencies. It's already been mentioned about DelDOT. Also, we'd need to have the...if there needs to be a sewer hook-up there; if the sewer has been not in use there, then Tidewater would have to be involved for the sewer hook-up; have to be with the Town for the water hook-up. These are things that fall in to those conditions and any other such conditions that you attach by majority vote.

Michael Filicko: So Mr. Brady, those conditions as far as the ones that you've just mentioned, that is something that is Bob and Debbie's expertise? No?

John Brady: The ones I mentioned about the outside agencies and are required by state law and town ordinance. Any other conditions are based upon the discussion you have in reviewing the standards for preliminary site plan approval under our zoning code.

Michael Filicko: Okay, so given the fact if Dr. Howard meets all of the state agency approvals, we can then grant him, if we vote yes, and personally I would like to see a landscape plan, that's all.

Debbie Pfeil: Right. Tonight what we're looking for for contingencies are we've already discussed the 3', we're talking about a fence or landscaping...you can ask for landscape architect as Mr. Brady said...these are things you can add on to the list of contingencies. The outside agency thing has really nothing to do with it until we get to final between construction I should say, with the planning commission.

Virginia Weeks: Madame Chairman, in the interest of moving on, may I ask a question please?

Linda Rogers: Yes.

Virginia Weeks: Will there be a dumpster on this site? There's no location nor drawing of the dumpster on the site plan, is there?

Linda Rogers: Well, let's finish this landscaping thing first, and then go to that.

Virginia Weeks: Oh, I thought that was finished, that he was going to bring a landscaping plan.

Linda Rogers: I just want...we didn't get down to this end of the table. I mean, we do want an architect landscape plan and do we want landscaping or fencing in the back or either is acceptable. I'll take landscaping, fencing as long as there is some type of buffer.

Virginia Weeks: How high a buffer? And how thick, I mean do you want a row of 1' high...

Linda Rogers: I'm not necessarily in favor of hedges and I'm not necessarily in favor of fences. I'd rather see some...

Virginia Weeks: I'd like to see arborvitae or something like that for example.

Linda Rogers: Excuse me.

Virginia Weeks: I'd like to see something tall to fill in the space.

Linda Rogers: I just would like to see some type of landscaping probably no less than 3'; that's about it, but...it'll bloom.

Dean Sherman: Like Dr. Howard, I'll agree to anything to move this thing forward.

Bill Brierly: I'm in favor of having landscaping and I am also in favor of being mixed. What I'd like...I do prefer landscaping on say the south side, especially the south side of the property. On the west side of the property, I don't really care if there is any landscaping there or not as long as we have the 3' setback.

Linda Rogers: Okay, Ginny?

Virginia Weeks: Where is the dumpster to be located please?

Debbie Pfeil: It's on the plan.

Dr. Paul Howard: It's just next to the little bell shape.

Debbie Pfeil: You see the little box where it says ac around it? There's a little not up there that says fence enclosure, trash and storage.

Virginia Weeks: That will also have to be amended with the buffer, correct? Thank you. And the lighting plan?

Debbie Pfeil: Turn down lights are proposed on the plan if you look. There's also a note that says turn down light type and there's two arrows.

Virginia Weeks: Does it show the location of the lights?

Debbie Pfeil: Would you address that?

Charles Adams: What we can do on the landscape, I would like to verify on the landscaping plan if it has to be by a professional landscape architect or can it be by a landscape designer such as somebody local?

Michael Filicko: (unintelligible – 9:05:41) I'm sorry.

Charles Adams: I would like to have that confirmed and what I could say is that one that plan we could have them add the lighting on the plan as well. I will put the lighting on my follow-up, final site plan that would meet or exceed the requirement.

Virginia Weeks: I'd also like to see a drawing of the sign that's to go up, please.

Charles Adams: Okay.

Michael Filicko: I don't think it has to be a landscape architect, but a landscape designer would be sufficient. Dr. Howard, is that...I'm sorry, I'm asking questions that I should be asking.

Linda Rogers: Okay. Anything else that we need to make requirements of?

Virginia Weeks: Madame Chairman, I'd like to bring forth the fact that looking at the front elevation of this drawing, you will notice that there is no front door. Both entrances are on the side of the house. I purposely drove down Union Street today and I would say that 95% of the houses have front porches. I don't think this design does justice to the rest of the street. I think that we should have a front door and a covering of some sort of a front door on the front of the house. Whether or not they use it, I don't care, but I think the look should resemble the rest of the houses in the area. I think that's what the Council was asking for.

John Brady: I just have a question and just because I drove down there too, isn't the existing house that's there has a side entrance and not a front door entrance?

Virginia Weeks: It has an enclosed glass porch Mr. Brady which they're proposing to change to two windows.

John Brady: I understand. I'm just saying that, and that's for your discussion, but when I looked at it, because I'm trying to be diligent also, I thought it had an existing side entrance right now so that would not be a change...

Virginia Weeks: I think the porch has a side entrance. I think the house probably has a front door. And since they're doing away with the porch, I would like to see a front door.

Dr. Paul Howard: Actually they're a panel not just a couple of windows drawn but in any case, yes that porch that's there right now has entrances from the two sides and there's some landscaping in front of it that I had hoped to save. I know construction people can be rough but I had hoped to save it; there's two little dogwood trees and some shrubberies and to put a door there we would have to perhaps have to lose some of that; that was my hope.

Virginia Weeks: Well, then can you amend it, the front, that area to we have house throughout Milton that have done the front porch thing where it's enclosed with panes of glass. Can you do that rather than having it look like it's the 3 sides of a bedroom? So it looks more like the front of the house?

Dr. Paul Howard: I'm sorry. We are talking about...

Virginia Weeks: I'm talking about right here, underneath this little roof that comes out at the front. You have three windows. You see how you have 3 windows? That looks like the side of the house.

Linda Rogers: Well, first of all I don't think this planning and zoning, and I don't mean to interrupt anybody, but I don't think you can tell him where he has to put door on the house.

Virginia Weeks: I'm sorry. I thought the instructions were that it was to be residential like.

Linda Rogers: But even so, I don't think I have to tell you have to put the doors on your house when you build a house.

Virginia Weeks: Okay.

Linda Rogers: I mean, am I right or am I wrong? You build a house, you do not necessarily have to have a door in the center of the front of the structure. You can have it to the side, wherever you design to have your doors or entryways.

Dr. Paul Howard: And again, to get back to what I said before, I was going to make every effort to save that...

Linda Rogers: I'm asking...

John Brady: Sure, I think they're asking me for that one Doctor, I'm sorry. I reviewed the 7 conditions and structure and design it says upon the sale of the property, the property be converted to a residence. The way I looked at it was, if it already had a side entrance and they weren't changing it, then they were just trying to clean up out front, then that's what I call changing the glass to having it a panel window. I thought that was in the character of what was there. But that's your decision, however, normally telling an applicant where to have the front door is not something that has been done by planning and zoning in the past. I can't find any precedent for that.

Virginia Weeks: I was going on because he said the design of the building to meet requirements of the Town Council by submitting plans with regards to structure and design, number 1 from the Councils, what the Council passed. And I was just saying that I would ask that we recommend to the Council that the front section not look like the side and it does look like the side; that it look like a front. If he wants it enclosed with a side door, that's fine, but then reflect what is typical of Milton which is a glass enclosure made of made of panels of glass. There's no house on the entire street or Federal Street, or any of those areas that has windows like that on the street. I was just trying to do what the Council asked in number 1. Thank you.

John Brady: I understand, but we don't have design standard in the Town at this moment and it's whatever the motion has to pass goes on to Council.

Linda Rogers: But we don't have design standards correct?

Michael Filicko: We don't have an architectural review committee.

Linda Rogers: My house doesn't have a front door.

Debbie Pfeil: Correct, we do not have design standards. This is a planning commission member's opinion. If it is a consensus as a whole, then you would make it a part of your motion. If it is not as a consensus as a whole, everybody has individual opinions on the planning commission. Does that kind of sum it up?

Michael Filicko: Yes Debbie.

Linda Rogers: So Ginny, your opinion is that it needs to have a front door in the front?

Virginia Weeks: Or change the siding. You know what I'm talking about Linda; there's the houses on Chestnut Street and over by the old cemetery and most of the house that have enclosed a porch, its glass. It's not something that looks like the side of a building. I just want it to look more like the front of a house.

Linda Rogers: Okay.

Virginia Weeks: If the door's not on the front because it's a porch, that's okay, because I want it to meld into the neighborhood as much as possible. I think that's what the Council asked for.

Linda Rogers: Does any...okay...anything else we want to change or review or put on as stipulations for this site plan? Anything? Anything we haven't answered the questions for?

Bob Kerr: For clarity in the future, if as if you decide to give preliminary approval if the 7 conditions placed on the property by Mayor and Council could be added to the site plan as part of the notes would assist in the future knowing what those conditions are. They would stay with the drawing that way.

Virginia Weeks: Thank you Bob.

Linda Rogers: Say that again.

Bob Kerr: Mayor and Council if I'm correct, and I haven't seen the minutes, but I believe they placed 7 conditions on the property, one of them being your recommendation on the hours, the one Mrs. Weeks just brought up and I do not have the minutes so I don't know what the other...

Debbie Pfeil: There's 7.

Virginia Weeks: I have them here.

Bob Kerr: It would just be the 7 conditions as placed on the conditional use by Mayor and Council be added to the drawing.

Virginia Weeks: If they put a front door on there, it doesn't mean they have to use the front door, but it should look like the neighborhood. I believe that was the intent of the Council.

(Talking amongst members)

Debbie Pfeil: I believe on my comments you've addressed the concerns that I had. I just want clarification and I guess you can make this as if you want it contingent or not, Mr. Adams asked the same thing about the landscape architect. If you want somebody certified or if they can provide a landscape plan which Mr. Adams would be submitting. That's the only clarification that I would need in your motion on top of the other contingencies you'd make.

Linda Rogers: Didn't we agree upon a designer, a landscape designer?

Virginia Weeks: A landscape, a professional landscape person, architect or designer, it doesn't matter. Somebody who knows what they're doing about what kind of plants go in there. Linda, question for...

Linda Rogers: Just one second, does that answer your question Debbie, to do it that way? Okay.

Virginia Weeks: Question, also they will be submitting before final, for final site review, proper drawings with all the dimensions. I mean, I feel very hobbled here because we don't have dimensions on these and I believe that's a requirement.

Linda Rogers: The site plan has to show all the dimensions, correct, final?

Debbie Pfeil: I think what she's referring to is when they submit for final, you stated to the project coordinator and your consultants you want all requirements met. You stated this in August, before they get placed on the agenda or they're not eligible for the agenda.

Virginia Weeks: Right, exactly, but I would like to see...Bob, for final site plan, do we have to have, will they be submitting to the Town plans with dimensions on them?

Debbie Pfeil: There is a checklist that they're required to submit unless you want conditions. I can go through that checklist if you want me to.

Virginia Weeks: No I just want my one question answered. Will they be required to submit plans with dimensions on them? Thank you.

Linda Rogers: Is everything answered? Are we clear? Is anyone ready to make a motion?

Michael Filicko: I'd like to make a motion to grant approval based upon...

Linda Rogers: As a preliminary.

Michael Filicko: As a preliminary approval, based upon review and approval by the necessary state agencies, and a landscape designer/architect either or...what else?

Bill Brierly: Drawing of the sign.

Michael Filicko: Drawing of the sign; 3' setbacks on each site; the 7 conditions brought forward by Mayor and Council on the November 5, 2007 meeting;

Bill Brierly: And submitting plans with dimensions.

Michael Filicko: And submitting plans with dimensions.

Virginia Weeks: And lighting and the sign.

Michael Filicko: Yes, I think lighting and sign is.

Linda Rogers: So we have a motion...

Michael Filicko: Did I hit everything?

Linda Rogers: Is there a second.

Bill Brierly: I'll second.

Linda Rogers: Okay, we have a motion and a second on the floor to approve this as a preliminary site plan with the following stipulations: that they obtain approval from all state agencies; the front yard be established; we have 3' green space on 3 sides of the property; a landscaping design be submitted; a lighting plan be submitted; a sketch of the sign; dimensions on the site plan; and the 7 conditions that were imposed by Mayor and Council be listed on the final plan. Is that correct? Any questions to the motion?

Debbie Pfeil: Question. The first discussion that we had was that the interpretation or the validation of the 20' setback with the handicap parking space. You were going to have the Town validate the information.

Linda Rogers: I have establish front yard setback.

Debbie Pfeil: Okay, and then the 3' setback was all around. Okay, thank you.

Linda Rogers: I have the 3' setback on 3 sides.

Debbie Pfeil: So we have a total of 7 items, is that correct?

Virginia Weeks: Linda.

Linda Rogers: I have 8 counting the conditions of the Mayor and Council.

Virginia Weeks: And also that as per the drawing submitted that the first parking spot be at least 20' back from the property line, because I don't want to see that changed.

Linda Rogers: That wasn't part of any of the discussions was it?

Debbie Pfeil: From what I understood, you said validate the average as the code reads within 300' or the 30'.

Linda Rogers: Right.

Debbie Pfeil: Right, but not less than the average.

Linda Rogers: Right.

Debbie Pfeil: We'd have to validate that.

Linda Rogers: Right.

Virginia Weeks: What I'm talking about is if you see the first parking spot, Bob has stated that from the lot line to first parking spot on the south side is 20'. I would like to see that remain.

Debbie Pfeil: The interpretation of that is she's making a recommendation but by code you can allow it to be the average. It's up to the commission.

Linda Rogers: Well we have a motion on the floor with it to establish the front yard setback. Do we proceed with this motion or do we amend it or we just go?

Bob Kerr: Just to clarify, if the average setback came back as 10', then the parking could move to within 10'. So what Mrs. Weeks is saying is she would like to limit it to the 20'.

Virginia Weeks: Thank you.

(Talking amongst members)

John Brady: You have a motion. The person making the motion, there's an amendment asked by Mrs. Weeks. Does the person who made the motion agree to the amendment?

Linda Rogers: Do you agree to that amendment?

Michael Filicko: Yes.

Linda Rogers: Mr. Brierly, do you agree to that? You seconded it, right?

Bill Brierly: I seconded the entire motion.

Linda Rogers: So are you okay with that?

Bill Brierly: I agree, yes.

Linda Rogers: Okay. We add that the first parking place on the south side be no closer than 20' to Union Street, correct?

Dean Sherman: Any parking, because they could come back...

Linda Rogers: Any parking. Okay, we have a motion and a second, Roll Call vote:

Bill Brierly:	Yes
Dean Sherman:	Yes
Linda Rogers:	Yes
Michael Filicko:	Yes
Louise Frey:	No, I still feel the addition is too large for the site.
Virginia Weeks:	No, I agree with Mrs. Frey and not happy with the way it fits in with the Councils request.

Linda Rogers: Okay, motion carried 3 to 2.

John Brady: 4 to 2.

Linda Rogers: 4 to 2. Sorry, I forgot myself.

Dr. Paul Howard: Madame Chairman, may I approach for clarification on one thing?

Linda Rogers: I hope so.

Dr. Paul Howard: The existing entrance or driveway if you will does not comply with that 3', does that mean I have to chop it out?

Linda Rogers: What?

Dr. Paul Howard: The existing driveway to the property...

Dean Sherman: We said on 3 sides.

Dr. Paul Howard: Okay

Linda Rogers: 3 sides.

Dean Sherman: 3 sides not 4 sides.

Robin Davis: You're fine.

Dr. Paul Howard: Okay. I'm sorry. Thank you.

Linda Rogers: Can we take 5 minutes.

(Recess from 9:22 to 9:30)

Linda Rogers: Robin, you ready? Okay, we are going to reopen the planning and zoning commission meeting. The next item on our agenda is:

**b. Final Site Plan Approval**

The applicant, Eagle Eye Development, is requesting final site plan approval for a mixed use (Commercial/Residential) Marina consisting of 23 dwelling units and 17,563 sq ft of commercial space. The property is located at 309 Front Street and further identified by Sussex County Tax Map and Parcel # 2-35-20.08-10.00.

Linda Rogers: Do we have to hear from the applicant at all or do we just hear from the engineer?

John Brady: This has, and I hate to use the word to being the pipeline for a while, but this one has been out there for a couple years and so members of planning and zoning may not have been on planning and zoning when this came through the first time. You do have the opportunity to vote tonight and ask questions. I think the town engineer's comments would be as he said and the planner, because it was before, filed before our planner came on before our planner was hired by the town, the planner did not make any comments, so I am going to defer to the Town Engineer for his updated comments and then we do have the applicant here if they have any questions.

Bob Kerr: Thank you. The construction drawings were submitted and reviewed and on December 19<sup>th</sup> I submitted a letter that the drawings are in accordance with the preliminary comments made by the town. The one thing that has differed a little bit from those comments was there was an area that had parking within the setbacks and everything was done to try to avoid that. In order to make it work, I took it upon myself to tell the developer to delete I believe it was 3 lots from the required number of lots and that was simply to keep the landscaping across the front so that there would not be parking spaces right up against the road. So I'm asking that as part of the approval



process that you also grant a waiver of 3 parking places. This is a joint use so that they did meet the full requirement for the commercial and the full requirement for residential. And you're parking ordinance does allow when there's joint use that you waive the maximum requirements. So based on comments at the preliminary approval where you did not want to see parking right up against the road and you did want landscaping between the project and the roadway, I took it upon myself to request the applicant to do that.

Linda Rogers: Is that it?

Bob Kerr: Yes, I believe Robin has received all outside agency approvals and unless you have any questions that you would call for a motion to approve the drawings as submitted and authorize the president to sign the drawings, or the chairman, excuse me.

Linda Rogers: Does anyone have any questions?

Virginia Weeks: I have a question just for my own interest. You said that all the commercial use is approved. So they have enough parking for what they are going to build commercial and residential, correct?

Bob Kerr: Yes. The, let me find exactly where it is so I can get it right...

Virginia Weeks: My real question is Bob, is the marina part of this plan?

Bob Kerr: No.

Virginia Weeks: So if they put in a marina they'll have to come back for additional parking?

Bob Kerr: That's my understanding that would be correct, yes.

Virginia Weeks: Okay, thank you.

Bob Kerr: The parking requirements were the 2.5 parking spaces per dwelling unit and 1 per 300 s.f. of office, 1 for 200 s.f. of retail and 1 for 100 s.f. of restaurant. A total of 157 were required and a 153 were provided. There were 4 as I said earlier I ask that they delete so that the landscape...I thought it would be better to have landscaping than that additional parking.

Virginia Weeks: I just wanted to know if we were including parking for a perhaps planned marina. I have no idea if one was planned for.

Bob Kerr: No, there's no marina shown at this time.

Virginia Weeks: Okay, thank you.

Lynn Celia: Hi. I should comment that we, the marina is planned to be 30 boat slips; one boat slip for each condo and then a half a dozen or so for what we would call transient boat slips; guests that want to come in, park, dine, shop, etc.

Virginia Weeks: So you won't be renting any out?

Lynn Celia: No, it's not the plan to rent. I am going through the process of applying for those boat slips, but to address your question I don't know that I, nor did we plan, nor was it brought up, is really no place to add additional parking places for the marina. It's 30 boat slips; one per condo. It's not something that we anticipate driving a lot of traffic. I think in total we, what is our total parking, over...

Bob Kerr: Total parking spaces provided are 153.

Lynn Celia: Yeah...

Virginia Weeks: No, I just wanted to know as long as you are not going to be renting out boat slips fine, then we don't need to calculate it.

Lynn Celia: Well it's not our intention to rent out boat slips. We don't have that set in stone yet so I don't want to mislead anybody. It's our intention to sell the boat slips along with the condos so we're working on our marketing plan right now.

Virginia Weeks: Thank you.

Lynn Celia: Okay.

Linda Rogers: Are there any other questions?

Bob Kerr: For the record if I may, if a dock or wharfs or boat docking facilities are provided, that would require the applicant to come back and obtain a site plan approval for adding anything that isn't now shown on the site plan.

Virginia Weeks: I just wanted to get that cleared up amongst all of us so we were all on the same page. Thank you.

Linda Rogers: Anyone else? If not, would someone like to make a motion?

(Talking between Michael Filicko and Dean Sherman)

Michael Filicko: Alright. I make a motion to approve the Milton marina with the contingency that the 3 parking spaces be, the site plan, with the contingency that the 3 parking spaces be permitted to be removed.

Linda Rogers: Is there a second to the motion?

Bill Brierly: And give the Chair the authority to sign the final plans.

Michael Filicko: And give the Chairperson the authority to sign the final plan.

Linda Rogers: Is there a second?

Dean Sherman: I'll second that.

Linda Rogers: We have a motion and a second to approve this as a final site plan with a waiver of 3 parking spaces and the authority for the Chairperson to sign the plan for recording. All in favor of the motion, Roll Call:

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: Yes

Bob Kerr: Time.

Linda Rogers: What?

John Brady: I think we have a technical issue. Mr....

Bob Kerr: I misspoke. It's 4 parking spaces that I'm requesting to be waived, not 3. My mistake.

John Brady: I wanted to get that before you did the final vote.

Michael Filicko: Okay. I'll amend that and instead of 3 spaces, 4 spaces. Do we have to do another roll call?

Linda Rogers: Okay. We've amended the motion from 3 spaces to 4, we'll recall the vote:

Bill Brierly: Yes

Dean Sherman: Yes

Linda Rogers: Yes

Michael Filicko: Yes

Louise Frey: Yes

Virginia Weeks: Yes

Linda Rogers: Motion carried unanimously to approve as a final. Okay, our next item on the agenda is:

c. **Proposed Changes to Conditional Use Ordinance**

Proposed elimination of Article 11 Section 11.1 of the zoning ordinance.  
This proposed ordinance would eliminate the conditional use process in the Town of Milton.

Linda Rogers: And this is a public hearing, this is a...what is this?

John Brady: This is just a discussion. Basically what it is under Article 11, Section 11.1, you're having, you have conditional use. Some people argue conditional use is spot zoning. And the issue's come up with conditional use applications that have been filed don't fall within what's recommended in the comprehensive plan. You're going through a new comprehensive plan and it was...it came up at one of the meetings and if it's not...what we're trying to is at the beginning of the month, I meet with the planner and the engineer and we go over the agenda, we go over the submissions to try and make it more orderly to proceed at the meetings, and I think you've seen that we've tried to answer questions and have stuff to you quicker and if things aren't correct we point them out. One of the issues that came up was with everything that's been going on in the town, does the town still need to have conditional uses, and so it was point on as a point. There is no, you have the ordinance, current ordinance in front of you. There is not a proposed ordinance to change but it basically would be if you decide you want to talk about it and want to see a proposed ordinance or because of how long we spent tonight and other things you want to table it till next month, you can table it for discussion. I will let you know that right now according to the initial calendar I have, subject to slight modification, I'll be in Ann Arbor, Michigan and probably somebody from my law firm will be here, because I will be going to see big blue to teach at their law school that day.

Virginia Weeks: You can't vote there.

John Brady: I'm sorry.

Virginia Weeks: You can't vote there.

John Brady: I don't vote.

Virginia Weeks: Okay. That's good.

John Brady: No, Michigan I would had to been there today, and technically you could have voted in New Hampshire last week and become a resident in Michigan this week to vote.

Virginia Weeks: There you go.

John Brady: Yeah, but I didn't do that. So, it was just for discussion purposes and if you want something further done on it I'll do that. If you say hey, it's okay the way we have it, that's fine. Sometimes that, and also we've added a Town Solicitor upstate, D, and I want to bring you up to date on a couple things with that, myself and Mr. Kerr. But before we get to that, if you want discussion, if you want it to go to Council, if you don't want it to go to Council, it's your pleasure.

Virginia Weeks: Question Mr. Brady. Since the planning board under, what is it, Delaware 22 or whatever it is that gives us our powers, doesn't that specifically mention conditional use will be one of the things the planning board does?

John Brady: Can do.

Virginia Weeks: Can do. Okay.

John Brady: If the Town ordinances don't provide for conditional uses, then you can't do it.

Virginia Weeks: Okay, so we're allowed not to have it is what basically I'm asking?

John Brady: It's completely within the power of an adopted zoning ordinance; it would be adopted by the Town Council.

Virginia Weeks: Well, Linda do you want to do this as a consensus thing again down the row or what do you want to do?

Linda Rogers: This is just up for discussion. I mean this isn't even a public hearing to take it out. This is just a discussion, right?

John Brady: This is just a discussion. All it would be would be a proposed ordinance that would eliminate conditional use process.

Linda Rogers: And then you would have to go through the public hearing process?

John Brady: Yes. Council would go through a public hearing process and will take any report that you have towards and then would use that as a...would vote on it.

Linda Rogers: Do we no longer have public hearings on ordinance changes? Planning and zoning doesn't?

John Brady: The way when I read and interpreted the charter was as follows. If a matter starts at the Town Council for first reading, it's referred to planning and zoning for their review; planning and zoning discusses it and then goes back. Before an ordinance can be adopted by the Town Council, it has to have a public hearing.

Linda Rogers: But only by them?

John Brady: Only by them. If you come up with an idea, you discuss it and then it goes to Town Council for action, Town Council has the public hearing on it; it doesn't have to go through a first reading and it goes that way. So, there are no more per say public hearings on proposed ordinances at planning and zoning; the way I read the Charter and the way I read the Code.

Linda Rogers: So what's your opinion? Or do you all want to talk about it another time?

Michael Filicko: I can't talk about it tonight.

Linda Rogers: Ginny?

Virginia Weeks: Well, off hand my opinion is I think conditional use is a useful ordinance and I think it should probably remain. I think it needs to be tightened up. I think some limitations probably need to be put on it. And as far as I know, nobody has ever come back for a year review, which is part of the conditional use. That seems to slip through the cracks and I think it's supposed to come back I believe yearly isn't it?

Linda Rogers: No.

Bob Kerr: There have been many that have come back after one year.

Linda Rogers: There have been a lot of them come back.

Virginia Weeks: Well, since I've been here, I haven't seen any recently I'll have to say in my time here. I haven't seen any.

Linda Rogers: We've only had two. Next opinion.

Louise Frey: You're saying nothing has come back for a revisit from this commission since I've been on the board. The nursery school, I guess they're no longer, that was a conditional use. I guess they never applied?

Bob Kerr: They never got a final.

Louise Frey: I can't think of anything else off the top of my head but there have been a few.

Bob Kerr: The....

Louise Frey: The dog store. Has that been a year? Was that a conditional use?

Debbie Pfeil: If I may, the question in front of you right now is the proposed ordinance would eliminate the conditional use process. Is the planning commission interested in eliminating, changing, we just need clear direction on how you want us to proceed.

Louise Frey: No, change it. No, I have no...leave it the way it is.

Dean Sherman: So keep?

Michael Filicko: I can't. I'm done. Know what I mean? I'm just...

Linda Rogers: You have no opinion.

Michael Filicko: Yeah, I don't...

Linda Rogers: I think it should stay. We might need to tighten it up some and there again if, the question has been asked several times, why don't they come back? Because someone in the Town Office apparently through all the changes that we've gone through within the Town Office, there's no one person that keeps record of them to know when they need to come back for review. So that's something that needs to be changed inside the internal mechanism in the office; and that's not pointing the finger at anybody, it's just that there's been so many changes, but I think we need to keep it. Your turn.

Dean Sherman: I agree with both Mrs. Week and Mrs. Rogers.

Bill Brierly: I agree with Linda's comments.

Linda Rogers: So the consensus is we want to keep it but we might need to tweak it?

Michael Filicko: Sounds great.

Linda Rogers: Is that good enough? The last item is:

d. **Town Solicitor Update**

- Wagamon's West Shore Storm Water Pond
- Memorandum of Understanding with DELDOT – Curbing & Development Signs

John Brady: Wagamon's West Shore Storm Water Pond and in agreement with the developers for the site, who had promised a pond with cascading water and what they got to the buyers (unintelligible – 9:49:10) was a dry pond with no cascading waters.

Without and admission of liability, the developers and the attorney general's office entered into a consent agreement to make it a pond with water with springs, with fountains. You may ask why wasn't that brought to you. Well, because the attorney general's office said they could do it themselves and they are higher on the food chain than us. I looked at how their ruling was and they did it as a consent agreement and so because of that state law and the powers in the attorney general's office, the remedy consumer protection's issues trumps having to go through the local planning process. Our Town staff was riding by and I think saw the work being done, found the permits were issued by the Town, they were told to do it by the attorney general's office by a date's (unintelligible – 9:50:13) and that's what they did. So, I've asked for the documents from the attorney general's office to ask why the attorney general's office didn't send it back to the Town, go through the Town's process. I'm still waiting for that material. Hopefully by next month I'll have a report for why they bypassed the Town but

I...it looks like what the attorney general's office was trying to do was remedy and injustice caused on the purchasers who relied on those representation of the developers that this amenity would be there. They handled it as a civil matter and they handled it by a consent agreement with the consumer protection unit and the developers. They never asked for the Town's input; they just did it.

Louise Frey: It's not complete yet. They're still working on it.

John Brady: Okay, but they didn't come in and get any permits and DNREC I think was surprised also.

Louise Frey: I don't know.

Robin Davis: Soil Conservation was surprised that the Town wasn't notified.

John Brady: The soil conservation district was surprised we weren't notified because they thought we should have been notified; that's how I started looking into it. It was brought to my attention I guess January 2<sup>nd</sup> or January 3<sup>rd</sup>.

Louise Frey: Please don't do anything to stop the process.

John Brady: I knew better than to do that. That's why I just was giving you an update.

They asked me should we issue a stop work order and I said absolutely not. I saw the crowd here for Chestnut Village and I said to get them mad I don't want to get anybody mad. But hopefully the purchasers and the residents there will be satisfied with what's done; that that was an amenity you were promised and the attorney generals office went out to try and get it for you.

Louise Frey: You got the story right then

John Brady: The second thing is I spoke...

Bob Kerr: John, if I may add something to that. One of the things that we're trying to check into is that the record plan does call for a dry pond so there's a document in John's, Sussex County Recorder of Deed's office that says it's a dry pond. So now there's a discrepancy between what's there and what the attorney general says is there and that's why we need information to come back to the Town.

John Brady: There may be a request of the attorney general to direct the developers to file an amended record plan to show that the dry pond has been converted to the wet pond with fountains, in order to make the paper trail correct.

Louise Frey: Well, at some point, I don't know what good records Eric kept, but someplace he came and knocked on our door, I'm sorry, that's the former zoning officer for anybody that doesn't know, he came and knocked on our door and said the pond is holding water. Instead of a dry pond, it will become a wet pond. We even went to Georgetown; we could not find anything that was in writing for that.

John Brady: Correct. You're absolutely correct. The second thing is the Memorandum of Understanding with DelDOT. There's issues that come up with what curbing is required where and development signs and I am going to defer to Mr. Kerr for part of this right now.

Bob Kerr: The easier one is the development signs. If you've noticed throughout the state, the new development signs, there's a picture of Caesar Rodney on a horse, and then it will have the development name below it. The state or DelDOT is requiring those signs to be provided. We asked or requested that within Town those signs not be provided. Everybody typically has an entrance sign now anyway. Cannery Village or Wagamon's both have the nice entrance signs. Having the other sign takes away from Milton being a community. It divides it into small subdivision. I tried to get it

eliminated for the project you just approved. There is one that will go just about in front of the waste water treatment plan as you're going out of Town and another one out of Town as you come in saying Milton Marina, the sign and an arrow and everything. The same thing is being required for Cannery Village Phase III & IV, and John is going to work, if that is the desire of planning and zoning commission to get the state to waive that requirement for us on the Memorandum of Understanding. The second one is on state maintained roads. They would prefer oftentimes no curb, sometimes sidewalks, sometimes not sidewalks. I've tried to explain that the Town does have a requirement that curb and sidewalk be provided. Then we get into problems with who's going to maintain it, who's not going to maintain it, and depending on the speeds, what type of curbing. The Town would like to have the interval curb and gutter as their standard every place and again this comes down to the possible Memorandum of Understanding between the Town and DeDOT that would say who's going to be responsible for which part of curb and sidewalk.

Virginia Weeks: Now, question of Mr. Kerr. Is that going to affect what we have done out at Food Lion plaza and all? We required curbs there.

Bob Kerr: We required curbing. It could impact depending on the speed limit along the road. They may not, as an example, because that one hasn't come back from the developer for final, but the Terrific Toys which is right on the property line, there's a 40mph speed limit sign about 10' east of the property. If it had been in front of the property, the curbing would have been the slanted curbing that you could drive up, but by that sign being another 10', which is outside of Town, I convinced them that we should use the regular interval curb and gutter. So it's all about speed limits and traffic and it's their road, and part of it is who is going to maintain it.

Virginia Weeks: Okay, thank you.

John Brady: Basically when I put items on there for the update, it's for you to think about it and if you have any questions you can ask me. Otherwise no action, either I didn't have listed for a vote, I just continue to keep you apprised but we've had that issue come up as you remember with the Town requiring curb and sidewalks and immediately outside of Town that that's not required by DeDOT. Then so you have the potential for sidewalks going nowhere, which we have a section of sidewalk like that right up by the Food Lion that goes about 12-1/2' to the Town line or 20' and then it just dies right there.

Linda Rogers: Is that it?

John Brady: That's it.

### **Item #7 - Adjournment**

Linda Rogers: Motion to adjourn.

Virginia Weeks: Second.

Motion to adjourn at 9:58 p.m.